

| <b>Notice of Allowability</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|-------------------------------|------------------------|---------------------|--|
|                               | 09/756,293             | WAGNER ET AL.       |  |
|                               | Examiner               | Art Unit            |  |
|                               | Q. Janice Li           | 1632                |  |

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 6/28/04.
2.  The allowed claim(s) is/are 32,35,36,41 and 44-53.
3.  The drawings filed on 09 January 2001 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

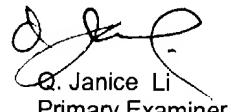
\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.



Q. Janice Li  
Primary Examiner  
Art Unit: 1632

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/28/04 has been entered.

The amendment and response filed 6/28/04 have been entered. Claims 32, 35, 36, 41, and 44 have been amended. Claims 45-53 are newly submitted. Claims 32, 35, 36, 41, and 44-53 are pending in the application and under current examination.

All of the amendments have been thoroughly reviewed. The previous rejections in the Office action mailed 6/15/04 are withdrawn in view of the amendments.

### ***EXAMINER'S AMENDMENT***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kristel Schorr on September 14, 2004.

32. (Currently Amended) A method of preparing a cancer vaccine composition for cancer immunotherapy, comprising:

- (a) contacting staining a freshly isolated neoplastic cell population freshly isolated from a patient with a first fluorescent dye,
- (b) contacting staining a dendritic cell population with a second fluorescent dye, wherein said first dye is different from said second dye,
- (c) contacting said neoplastic cell population and said dendritic cell population with one another under conditions that promote cell fusion, and obtaining a resultant hybrid cell population stained with both the first and second dyes,
- (d) purifying the resultant hybrid cell population by fluorescence activated cell sorting, and
- (e) resuspending the resultant hybrid cell population in a pharmaceutically acceptable vehicle to obtain the tumor vaccine;

wherein said cell sorting method does not involve antibiotic or metabolic selection, said purification purifying is accomplished in less than about 24 to 48 hours[,] after said contacting exposure of said neoplastic cell population and said dendritic cell population to said conditions that promote cell fusion, and the tumor antigen antigenic diversity of the starting tumor neoplastic cell population is preserved in the resultant hybrid cell population.

44. (Currently Amended) A method of preparing a hybrid cell preparation, comprising:

- (a) ~~contacting staining a freshly isolated tumor cell population freshly isolated from a patient with a first fluorescent dye,~~
- (b) ~~contacting staining a dendritic cell population with a second fluorescent dye, wherein said first dye is different from said second dye,~~
- (c) contacting said tumor cell population and said dendritic cell population with one another under conditions that promote cell fusion, and obtaining a resultant hybrid cell population stained with both the first and second dyes, and
- (d) purifying the resultant hybrid cell population by fluorescence activated cell sorting,  
wherein ~~said cell sorting method does not involve antibiotic or metabolic selection, said purification purifying is accomplished in less than about 24 to 48 hours[,] after said contacting exposure of said neoplastic cell population and said dendritic cell population to said conditions that promote cell fusion, and the tumor antigen antigenic diversity of the starting tumor cell population is preserved in the resultant hybrid cell population.~~

In claim 48, the word - -buffer- - was inserted in place of "vehicle" in line 2.

### ***Conclusion***

Claims 32, 35, 36, 41, and 44-53 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Q. Janice Li** whose telephone number is 571-272-0730. The examiner can normally be reached on 9:30 am - 7 p.m., Monday through Friday, except every other Wednesday.

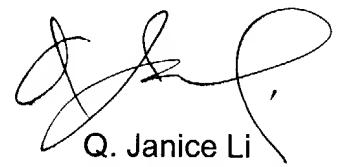
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Amy Nelson** can be reached on 571-272-0804. The fax numbers for the organization where this application or proceeding is assigned are **703-872-9306**.

Any inquiry of formal matters can be directed to the patent analyst, **Dianiece Jacobs**, whose telephone number is (571) 272-0532. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system

provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.



Q. Janice Li  
Primary Examiner  
Art Unit 1632

  
September 15, 2004